

Chapter 28

MISCELLANEOUS OFFENSES AND PROVISIONS*

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ARTICLE I. IN GENERAL

Sec. 28-1. Obstructing ditches.

It shall be unlawful for any person to throw or deposit in any ditch anything which will in any way obstruct the free flow of water through the same.

(Code 1968, § 28-3)

Sec. 28-2. Possession of gasoline siphons.

It shall be unlawful for any person to have in his possession upon any public street, alley, sidewalk or other public place within the city limits any rubber hose or any other device which could be used to siphon gasoline out of an automobile.

(Code 1968, § 28-11)

Sec. 28-3. Possession of missiles.

It shall be unlawful for any person to possess or have in his pocket, hands or about his person any stone, bolt, rock, piece of iron or other missile or

hard object with the intent to injure or do harm to any person or to property, or with the intent to commit any unlawful act.
(Code 1968, § 28-14)

Sec. 28-4. Display or sale of goods in doorway, lobby, etc., of unoccupied buildings.

It shall be unlawful for any person to sell, offer for sale or display, in the doorway, lobby, stairway or entrance of any unoccupied store building or office building in the city, any goods, wares or merchandise.

(Code 1968, § 28-16)

Sec. 28-5. Notice of guard or watch dogs on premises.

It shall be unlawful to place a guard or watch dog on any premises other than a private residence and private grounds unless notice thereof is given to the police department. Such notice may be accomplished either by giving written notice thereof to the police department or by posting a sign at each entrance to the premises or building.

***Charter reference**—Police power of city, Art. II, § 16.

Cross reference—Noise, Ch. 30.

A notice posted on the premises shall be by a sign furnished or approved by the police department and having letters not less than one inch in height and which sign shall state the following:

"WARNING: WATCH DOG ON PREMISES."
(Code 1968, § 28-18.1; Ord. No. 68-1032, § 1, 6-25-68)

Sec. 28-6. Bands playing in public for contributions.

The playing of bands upon the streets or in other public places in the city, with a view to taking up a collection from the bystanders by someone, for the benefit of the members composing such band, shall be a nuisance and unlawful. Every member of such a band who plays with a view to taking up or having taken up a collection from the bystanders shall be guilty of committing a nuisance; provided, however, this section shall not be construed to apply to religious organizations that conduct their services in the streets or in other public places or to sidewalk performers performing within the "theater/entertainment district" defined in section 40-261 of this Code pursuant to a permit issued under article XI of chapter 40 of this Code.

(Code 1968, § 28-27; Ord. No. 91-1168, § 3, 8-14-91)

Cross reference—Noise, Ch. 30.

Sec. 28-7. Unattended children in motor vehicles.

(a) A person commits an offense if he, acting with knowledge, intent or criminal negligence, leaves a child in a motor vehicle for longer than five minutes if the child is:

- (1) Younger than seven years of age; and
- (2) Not attended by an individual who is 14 years of age or older.

(b) The terms "knowledge," "intent" and "criminal negligence," as used in this section, shall have the same meanings as set out in the definitions of these terms in the Texas Penal Code.
(Code 1968, § 28-32; Ord. No. 83-1405, § 1, 9-6-83)

Sec. 28-8. Fences—Prohibited along sidewalks.

Except as otherwise provided, it shall be unlawful for any person to erect or maintain, within the city limits, any railing or fencing along the sidewalks next to the street.

(Code 1968, § 28-33)

Sec. 28-9. Same—Barbed wire prohibited.

It shall be unlawful for any person owning or controlling any property in the city to construct, maintain or permit to remain on such property any fence constructed in whole or in part of barbed wire; provided, however, fences constructed in part of barbed wire shall be permitted if all of the barbed-wire portion thereof is six feet or more from the ground; and provided further, a plot of ground containing one acre or more may be fenced with barbed wire where such barbed wire does not abut to any extent whatsoever on a sidewalk or on an unimproved path or trail which is used by pedestrians for sidewalk purposes.

(Code 1968, § 28-34)

Sec. 28-10. Same—Electric prohibited; exceptions.

It shall be unlawful for any person owning or controlling any property in the city to construct, maintain or permit to remain on such property any fence charged with electricity. It shall be unlawful for any person to cause any fence situated in the city to become charged with a current of electricity, to connect any such fence with a source of electricity or to permit any fence under the control of such person to be connected with a source of electricity. In any prosecution under this section, testimony that any fence was under the control of the defendant or situated on his premises and that any person received an electric shock by coming in contact with such fence shall be prima facie evidence that such defendant caused and permitted such fence to be charged with a current of electricity and caused and permitted such fence to be connected with a source of electricity; provided, however, the provisions of this section shall not be applicable to any fence on zoological gardens owned and operated by a political subdivision of the state.

(Code 1968, § 28-35; Ord. No. 85-1746, § 1, 10-1-85)

Sec. 28-11. Open or uncovered wells, cisterns, excavations, etc.

It shall be unlawful for any person to permit, on premises owned or occupied by him, any well, cistern or other excavation to remain open or uncovered, to the danger of others.

(Code 1968, § 28-36)

Cross reference—Street excavations, § 40-127 et seq.

Sec. 28-12. Fencing or filling of abandoned excavations.

(a) It shall be unlawful for any person to build, construct or maintain, or to have built or constructed, any excavation of any size, and thereafter to abandon the use and maintenance thereof, unless such person shall construct a chain link fence or masonry fence at least six feet in height, which fence shall completely enclose such excavation, or fill such excavation with earth, bank sand or similar material. It is an affirmative defense to prosecution under this section that the excavation is for a basement or foundation for a structure that is actively being constructed or that the excavation is a swimming pool subject to regulation under chapter 43 of this Code.

(b) Any person violating any provision of this section, upon conviction, shall be fined not less than \$100.00 nor more than \$2,000.00 for each violation, and each day shall constitute a separate offense.

(Code 1968, § 28-37; Ord. No. 73-2472, § 1, 12-14-73; Ord. No. 92-184, § 2, 2-19-92; Ord. No. 92-1449, § 42, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Swimming pools, Ch. 43; assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for time served in incarceration, § 35-6 et seq.

Sec. 28-13. Employees of restaurants, etc., soliciting food or beverages.

(a) It shall be unlawful for any owner or employee of any establishment in which food or beverages are sold or offered for sale for consumption on the premises to solicit, induce, entice, or encourage any patron or customer thereof to buy food or beverages from that establishment for consumption by the soliciting owner or employee

or by any other person whom the soliciting employee or owner knows to be an owner or employee of the establishment.

(b) It shall be unlawful for any owner, manager, operator or person having control of any establishment in which food or beverages are sold or offered for sale for consumption on the premises to permit, allow or suffer any other owner or employee of the establishment to solicit, induce, entice, or encourage any patron or customer thereof to buy food or beverages from that establishment for consumption by the soliciting owner or employee or by any other person whom the soliciting owner or employee knows to be an owner or employee of the establishment.

(c) It shall be a defense to prosecution under this section that:

- (1) The customer or patron solicited was known by the soliciting employee or owner to be a relative of either the soliciting employee or owner or the employee or owner for whom the food or beverages were solicited; or
- (2) The customer or patron solicited was a friend of the soliciting employee or owner for whom the food or beverage was solicited and that friendship existed prior to the customer or patron's most recent visit to the establishment.

(d) In the interpretation and enforcement of this section the term "employee" shall be construed to include managers, operators, agents, and servants.

(e) The provisions of this section shall not apply to establishments operating under a license or permit granted under authority of the Texas Alcoholic Beverage Code.

(f) Any person violating any provision of this section, upon conviction, shall be punished as provided by section 1-6 of this Code. Each unlawful act shall constitute a separate violation.

(Code 1968, § 28-38.2; Ord. No. 76-611, § 1, 4-13-76; Ord. No. 77-865, § 1, 5-4-77; Ord. No. 79-579, § 1, 4-10-79; Ord. No. 92-1449, § 43, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 28-14. Renting premises to person who engages in prostitution or related criminal activity.

(a) It shall be unlawful for any person, whether agent, resident, or owner, to knowingly rent, lease, sublet, hire, or agree to rent, lease, sublet, or hire, any house, building or room to any person who offers to engage, agrees to engage or engages in sexual conduct for a fee; solicits another in a public place to engage with any person in sexual conduct for hire; receives money pursuant to an agreement to participate in the proceeds of prostitution; solicits another to engage in sexual conduct with another person for compensation; or owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) The offense set forth in this section is a misdemeanor and shall, upon conviction, be punishable by a fine of not less than \$500.00 nor more than \$2,000.00. However, any conduct in violation of this section that also constitutes an offense under state law shall instead be punishable as provided in the applicable state law.

(c) It shall be an affirmative defense to prosecution under this section that the renter, lessee, or sublessee, rents, leases, subleases, or hires, the house, building or room for a continuous period exceeding 27 days in exchange for payment for the rental, lease or sublease, for the entire continuous period on a specified day.

(d) The definitions of *prostitution*, *sexual conduct*, and related offenses in Chapter 43 of the Texas Penal Code shall apply to this section.
(Code 1968, § 28-39; Ord. No. 06-76, § 1, 1-25-06)

Sec. 28-15. Bringing persons together for purpose of lewdness, assignation or prostitution.

It shall be unlawful for any person to bring together, offer to bring together, or assist in bringing together, by automobile, telephone or in any other manner, directly or indirectly, two or more persons for the purpose of lewdness, assignation or prostitution.
(Code 1968, § 28-40)

Sec. 28-16. Transporting persons for unlawful or immoral purposes.

It shall be unlawful for any person to transport, offer to transport, or aid, or assist in transport; directly or indirectly, any person in, upon, over or through the streets of the city, by means of an automobile or other vehicle, for purposes of lewdness, assignation or prostitution, or for any other unlawful or immoral purpose.
(Code 1968, § 28-41)

Sec. 28-17. Theater exhibits viewable from streets.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Erotic* is a descriptive term meaning without serious literary, artistic, political or scientific value for minors.
- (2) *Minor* is a human being under the age of 17 years.
- (3) *Person* is any individual, firm, partnership, association, corporation, company or organization of any kind connected or employed by any "theater," as that term is defined herein.
- (4) *Theater* is any premises in which motion pictures or slides are projected upon a screen or a theatrical performance is given for viewing by patrons, which screen or performance is visible from any public street, sidewalk, alley or other public property.
- (5) *Sexually explicit nudity* is the portrayal of the following sexual conduct:
 - a. Human genitals in a state of sexual stimulation or arousal; or
 - b. Acts of human masturbation, sexual intercourse, or sodomy; or
 - c. Fondling or other touching of less than completely and opaquely covered human genitals, the pubic region, the buttocks, or the breast of a human female.

- (6) *Sidewalk* is any walkway, pavement or pathway used by the public which is located on publicly owned property or publicly held easements.

(b) It is hereby declared to be a public nuisance for any person to show or participate in the showing at a theater in the city of any motion picture, slide, or other exhibit upon or before a screen which is visible from any public street, sidewalk, alley, or other public property, where such motion picture, slide, or other exhibit:

- (1) Shows sexually implicit nudity in a manner patently offensive to minors; and
- (2) Taken as a whole, appeals to the prurient interests of minors, as determined by the average person applying contemporary community standards; and
- (3) Considered as a whole, is erotic.

(c) It is not a public nuisance under this section if the screen upon which the motion picture, slide, or other exhibit is shown is not visible from a public street, sidewalk, alley, or other public property.

(d) The city attorney is hereby authorized to institute a civil proceeding in a court of competent jurisdiction to enjoin any activity declared to be a public nuisance by this section.

(Code 1968, § 28-41.1; Ord. No. 71-249, §§ 1—4, 2-3-71; Ord. No. 78-1991, § 1, 10-10-78; Ord. No. 79-271, § 1, 2-21-79)

Sec. 28-18. Public nudity.

It shall be unlawful for any person to appear on any public street, sidewalk, alley, or other public thoroughfare, in or such close proximity thereto, as to be observed by the public traveling on such street, sidewalk, or other public thoroughfare, in a state of complete nudity, or in such a manner of dress or of undress in a manner which exposes to the public view such person's genitalia and/or buttocks, and in the case of a female, the female breasts.

(Code 1968, § 28-42.2; Ord. No. 70-411, § 1, 3-18-70; Ord. No. 72-904, § 1, 6-2-72)

Sec. 28-19. Public urination or defecation.

It shall be unlawful for any person to urinate or defecate in any public place or in immediate proximity thereto where such place has not been designated as a restroom.

(Code 1968, § 28-42.5; Ord. No. 72-904, § 2, 6-2-72)

Sec. 28-20. Entering restrooms of opposite sex.

It shall be unlawful for any person to knowingly and intentionally enter any public restroom designated for the exclusive use of the sex opposite to such person's sex without the permission of the owner, tenant, manager, lessee or other person in charge of the premises, in a manner calculated to cause a disturbance.

(Code 1968, § 28-42.6; Ord. No. 72-904, § 2, 6-2-72)

Sec. 28-21. Glue and related substances—Sale, possession, etc.

(A) *Definitions.* The following definitions shall apply to the construction and application of this section:

- (1) *Possession* shall mean actual care, custody, control or management.
- (2) *Abusable glue, aerosol paint or aerosol shoeshine product* shall mean any glue, aerosol paint or aerosol shoeshine containing any one or more of the following solvents:
 - (a) Acetone.
 - (b) Amyl acetate.
 - (c) Benzol or benzene.
 - (d) Butyl acetate.
 - (e) Butyl alcohol.
 - (f) Carbon tetrachloride.
 - (g) Chloroform.
 - (h) Cyclohexanone.
 - (i) Ethanol or ethyl alcohol.
 - (j) Ethyl acetate.
 - (k) Hexane.
 - (l) Isopropanol or isopropyl alcohol.
 - (m) Isopropyl acetate.
 - (n) Methyl "cellosolve" acetate.
 - (o) Methyl ethyl ketone.
 - (p) Methyl isobutyl ketone.
 - (q) Toluol or toluene.
 - (r) Trichlorethylene.

(s) Tricresyl phosphate.

(t) Xylol or xylene.

(B) *Sale, deliver, etc., to minors.* It shall be unlawful for a person to knowingly sell, offer for sale, deliver, give or make available to any individual under the age of eighteen (18) years any abusable glue, aerosol paint or aerosol shoeshine product or any substance containing one or more of the following volatile chemicals:

- (1) Toluol.
- (2) Hexane.
- (3) Trichlorethylene.
- (4) Acetone.
- (5) Toluene.
- (6) Ethyl acetate.
- (7) Methyl ethyl ketone.
- (8) Trichloroethane.
- (9) Carbon tetrachloride.
- (10) Methanol.
- (11) Methyl isobutyl ketone.
- (12) Methyl cellosolve acetate.
- (13) Cyclohexanone.
- (14) Amyl nitrite.
- (15) Butyl nitrite.
- (16) Nitrous oxide.
- (17) Chloroform.
- (18) Diethyl ether.

(C) *Labeling—On products for sale.* It shall be unlawful for a person to knowingly sell or offer for sale any abusable glue, aerosol paint or aerosol shoeshine product or any substance or product containing one or more of the volatile chemicals listed in subsection (B) herein in less than five-gallon quantities, unless the label for such product clearly lists said volatile chemical or chemicals as a component therein.

(D) *Same—On manufactured products.* It shall be unlawful for a person to knowingly manufacture, mix, or otherwise prepare for sale or distri-

bution for sale any abusable glue, aerosol paint or aerosol shoeshine product or a substance or product which contains one or more of the volatile chemicals listed in subsection (B) herein, unless the label for such substance or product clearly lists said volatile chemical or chemicals as a component therein. The provisions of this subsection (D) shall not apply to a substance or product manufactured, mixed, or otherwise prepared for sale or distribution for sale in interstate commerce.

(E) *Sign at point of sale.* It shall be unlawful for a person to knowingly sell, offer for sale, or display for sale, any abusable glue, aerosol paint or aerosol shoeshine product unless such person prominently displays a sign at the point of sale of such product stating that it is unlawful to sell or otherwise transfer possession to anyone under the age of eighteen (18) any abusable glue, aerosol paint or aerosol shoeshine product. Such sign shall be a minimum of ten (10) inches wide by fifteen (15) inches in length and must contain the statement required by this subsection in letters at least one-half inch high and an eighth of an inch wide and shall state the following:

"Unlawful to sell or make available to anyone under the age of eighteen (18) any abusable glue, aerosol paint or aerosol shoeshine product containing:

- (1) Acetone;
- (2) Amyl acetate;
- (3) Benzol or benzene;
- (4) Butyl acetate;
- (5) Butyl alcohol;
- (6) Carbon tetrachloride;
- (7) Chloroform;
- (8) Cyclohexanone;
- (9) Ethanol or ethyl alcohol;
- (10) Ethyl acetate;
- (11) Hexane;
- (12) Isopropanol or isopropyl alcohol;
- (13) Isopropyl acetate;
- (14) Methyl "cellosolve" acetate;

- (15) Methyl ethyl ketone;
- (16) Methyl isobutyl ketone;
- (17) Toluol or toluene;
- (18) Trichlorethylene;
- (19) Tricresyl phosphate; or
- (20) Xylol or xylene."

(F) *Proof of age.* It shall be a prima facie presumption that a person selling, offering for sale, delivering, giving, otherwise transferring possession or making available any abusable glue, aerosol paint or aerosol shoeshine product to a purchaser or transferee knew such was under the age of eighteen (18) years, unless such person asked for and was furnished one of the following proofs of age prior to such sale, offer for sale, delivery, gift or other offer of availability:

- (1) A current driver's license from Texas or another state within the United States;
- (2) An identification card issued by the Texas Department of Public Safety; or
- (3) A current passport.

(G) *Possession with intent to inhale.* It shall be unlawful for a person to have in his possession any abusable glue, aerosol paint or aerosol shoeshine products or any substance containing one or more of the volatile chemicals listed in subsection (B) herein with the intent to inhale such products or chemicals.

(H) *Prescription of physicians, dentists, etc.* It shall be a defense to any prosecution under this section that any abusable glue, aerosol paint or aerosol shoeshine product or any substance containing one or more of the volatile substances listed in subsection (B) was sold, offered for sale, delivered, given, or made available by a duly licensed physician, dentist or veterinarian, or by a scientific investigator in the course of professional practice or research in this state.

(I) *Prescription by medical institutions.* It shall be a defense to any prosecution under this section that any abusable glue, aerosol paint or aerosol shoeshine product substance or any substance containing one or more of the volatile substances listed in subsection (B) or was sold, offered for

sale, delivered, given or made available by a pharmacy, hospital, or other institution licensed or registered to dispense such substance in the course of professional practice or research in this state.

(Code 1968, § 28-45; Ord. No. 78-1330, § 1, 6-28-78; Ord. No. 83-50, § 1, 1-12-83)

Sec. 28-22. Same—Penalty.

Any person violating any provision of section 28-21 of this Code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$2,000.00 for each offense. Each sale, offer for sale, delivery, gift, offer of availability, manufacture or preparation of a substance or product for sale or distribution, or possession prohibited by section 28-21 shall constitute a separate offense under the terms herein. Each day of display for sale prohibited by section 28-21(f) shall constitute a separate offense under the terms herein. To the extent that any offense under section 28-21 also constitutes an offense under state law, then it shall be punishable as provided in state law.

(Code 1968, § 28-46; Ord. No. 78-1330, § 2, 6-28-78; Ord. No. 92-1449, § 44, 11-4-92)

Charter reference—Penalty for ordinance violations, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 28-23. Identification cards for utility, cable, etc., employees.

It shall be unlawful for any utility or cable television company holding a franchise from the city, its officers, agents or employees, to direct or permit an employee of such a company or of an independent contractor hired by such company to enter upon a public utility easement traversing private property unless:

- (1) Such employee is furnished with an identification card, badge, insignia or uniform identifying such person as an employee of such company or independent contractor; or

- (2) Such employee is under the immediate supervision and control of another employee furnished with such an identification card, badge, insignia or uniform.

(Code 1968, § 28-55.2; Ord. No. 81-1460, § 1, 8-4-81)

Sec. 28-24. Trespass generally.

It shall be unlawful for any person to be found on the premises of another in the nighttime, under suspicious circumstances.

(Code 1968, § 28-57; Ord. No. 68-1962, § 2, 12-11-68)

Sec. 28-25. Reserved.

Editor's note—Ord. No. 03-703, § 8, adopted July 30, 2003, repealed § 28-25 in its entirety. Formerly, said section pertained to parking of vehicles by valet parking operators on roadway within central business district as enacted by Ord. No. 02-558, § 2, adopted June 19, 2002.

Sec. 28-26. Reserved.

Secs. 28-27, 28-28. Reserved.

Editor's note—Former §§ 28-27 and 28-28, which pertained to smoking in public places and smoking in the Municipal Courts Building, were repealed by § 4 of Ord. No. 86-1311, enacted July 30, 1986. The repealed provisions derived from §§ 28-62 and 28-62.1 of the 1968 Code and the following ordinances: Ord. No. 75-668, §§ 1—4, enacted May 7, 1975; Ord. No. 75-931, §§ 1, 2, enacted May 28, 1975; Ord. No. 75-1216, §§ 1, 2, enacted July 9, 1975; Ord. No. 75-1390, § 1, enacted Aug. 5, 1975; Ord. No. 81-882, § 1, enacted May 5, 1981; Ord. No. 81-2397, § 1, enacted Dec. 2, 1981; and Ord. No. 86-322, §§ 1—4, enacted March 5, 1986.

Sec. 28-29. Pay toilets in public places.

It shall be unlawful for any person to make a charge for the use of a toilet maintained in a place open to the public or to a substantial part of the public.

(Code 1968, § 28-67; Ord. No. 77-228, § 1, 2-2-77)

Sec. 28-30. Conduct in buses, etc.

(a) It shall be unlawful for any person inside any bus or other motor vehicle engaged in mass transportation service on or over any street of the city:

- (1) To consume any food or beverage; provided that this paragraph shall not apply to the driver of any such motor vehicle not in motion;

- (2) To throw or deposit any garbage, refuse, containers, wrappings, or other trash upon any surface inside any such motor vehicle, except a designated trash receptacle; or
- (3) To use or operate any radio receiver, magnetic tape player, or other electronic device in such a manner as to be plainly audible to any other person inside the motor vehicle, provided that this paragraph shall not apply to any electronic device attached to the motor vehicle and used by the driver for mass transportation purposes.

(b) As used in this section "bus or other motor vehicle engaged in mass transportation service" means any motor vehicle engaged in the carrying of passengers for hire from or to designated tran-

sit stops within the city or adjacent urbanized areas, but shall not include chartered vehicles, sightseeing vehicles, chauffeured limousines, school vehicles, school buses, taxicabs, or any vehicle providing intercity service regulated by the state or the United States of America.

(Code 1968, § 28-68; Ord. No. 77-1167, § 1, 8-24-77)

Sec. 28-31. Dogs in buildings under management of convention and entertainment facilities department or public library system.

(a) It shall be unlawful for any person having control over a dog to bring such animal into a building which is under the management of the convention and entertainment facilities department or the Houston Public Library System, or to permit a dog under his control to be within such a building.

(b) It shall be a defense to prosecution under subsection (a) that:

- (1) The dog was owned by the city.
- (2) The dog was a guide dog accompanying a blind person.
- (3) The dog was brought into a facility in accordance with the terms of a rental agreement under which such facility had been rented from the city.
- (4) The dog was only in areas solely used for parking of motor vehicles.

(Code 1968, § 28-69; Ord. No. 77-2412, § 1, 11-22-77; Ord. No. 96-50, § 2, 1-17-96)

Cross references—Convention and entertainment facilities department, § 12-2; libraries, Ch. 24.

Sec. 28-32. Use of candles on certain city properties.

(a) No person shall light a candle on the grounds of the Sam Houston Coliseum, the Coliseum Annex, the Jesse H. Jones Hall for the Performing Arts, the Music Hall, the Albert Thomas Convention and Exhibit Center and underground parking garages, the City Hall, the Margaret Westerman City Hall Annex, the Police administration building, the Underground Telephone Exchange and Emergency Operating Center, the Fire Alarm

Building, the Municipal Courts Building, the Julia Ideson Building, and the Central Library Building of the Houston Public Library System unless the base of the candle is surrounded by a container sufficiently large enough to catch and to retain the wax droppings.

(b) A violation of subsection (a), upon conviction, shall be punished as provided by section 1-6 of this Code.

(Code 1968, § 28-70; Ord. No. 79-867, §§ 1, 2, 5-23-79; Ord. No. 79-911, §§ 1, 2, 6-5-79; Ord. No. 92-1449, § 45, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for time served in incarceration, § 35-6 et seq.

Sec. 28-33. Carrying clubs, poles, etc., in demonstrations, picket lines, etc.

(a) No person shall carry or possess while participating in any demonstration, rally, picket line or public assembly, any stick, board, pole, stave, rod, plank, pipe, stud, cane, staff, slat, or similar object unless that object conforms to the following specifications:

- (1) All objects which are generally rectangular in shape shall not exceed one-fourth inch in thickness and two inches in width.
- (2) All objects which are not generally rectangular in shape shall not exceed three-quarters inch in their thickest dimension.
- (3) All objects must be constructed of wood, wood products, or other cellulose materials.

(b) The fact that an object described in subsection (a) forms a component part of a sign or placard does not exempt it from coverage under this section.

(c) It is an affirmative defense to prosecution under this section that the object is used as an ambulatory aid and that the actor has a valid medical need for such aid.

(Code 1968, § 28-71; Ord. No. 78-2357, § 1, 11-29-78)

Cross reference—Parades, § 45-231 et seq.

Sec. 28-34. Location of automobile storage lots, automobile wrecking and salvage yards and lots used for open storage by junk dealers, scrap metal processors and secondhand dealers.

(a) *Prohibition.* It shall be unlawful for any person to operate or cause to be operated an automobile storage lot, whether licensed as an automotive storage lot pursuant to chapter 8 of this Code or as a vehicle storage facility pursuant to the Vehicle Storage Facility Act (article 6687-9a, Texas Revised Civil Statutes), an automotive wrecking and salvage yard as defined in chapter 8 of this Code, a lot used for open storage by a junk dealer, scrap metal processor or secondhand dealer, all as defined in chapter 7 of this Code, or a lot used for open storage by a used parts and used accessories dealer as defined in chapter 8 of this Code, within 300 feet of an existing church, school, or residence. The 300 foot measurement required under this section shall be made on the basis of land uses in existence at the time that the original permit or license application for the facility is filed and at the time of any expansion of the size of the property used for the facility. A facility that is lawfully in operation shall not become unlawful because a church, school, or residence is subsequently established within 300 feet of the facility and, provided that the facility remains continuously in operation without cessation for a period of 90 or more consecutive days, the permit or license for the facility may, subject to compliance with other applicable laws, nevertheless be renewed or transferred."

(b) *Definitions and standards:*

- (1) *Church.* A structure where a society of persons who profess a religious belief regularly assemble for religious worship or religious instruction and which is exempt from ad valorem taxes.
- (2) *School.* A public or private elementary, junior high and high school.
- (3) *Residence.* Any structure which, at the time of the application for a license, is being used as a dwelling place for residential purposes, whether single-family or multifamily. A structure located on a lot or

tract of land used as an automobile storage lot, automobile wrecking and salvage yard or lot used for open storage by a junk dealer or a secondhand dealer shall not be considered a residence within the terms of this definition.

- (4) *Open storage.* Materials stored upon a lot not within an enclosed structure.
- (5) *Measurement of 300 feet.* Shall be in a straight line from the property line or (at the applicant's request) from the boundary of operations of the automobile storage lot, automobile wrecking and salvage yard, or lot used by a junk dealer or secondhand dealer to the property line of the church, school or residence.
- (6) *Boundary of operations.* Shall be the fence line limiting the portion of a larger lot or tract to be used as the business operation area for the business requiring licensure under this Code. The boundary of operations shall be shown on a legal (or official) survey filed with the application for license and must be fenced according to the applicable standards of this Code. The fence shall be shown on the survey. The survey shall additionally show each route that will be used for vehicular ingress or egress to the business operation area. If the ingress or egress will not be exclusively taken from one or more public streets that abut the business operation area, then each route of vehicular ingress or egress must be included within the surveyed and fenced boundary of operations. This definition is applicable to automobile storage lots, automobile wrecking and salvage yards, and lots used for open storage by junk dealers, scrap metal processors and secondhand dealers only and has no effect on any other person or business required to be licensed by the city.

(c) *Existing structure.*

- (1) The terms of this section shall apply to all existing licensed automobile storage lots, automobile wrecking and salvage yards, and lots used for open storage by junk dealers, scrap metal processors and sec-

ondhand dealers, from and after December 22, 1982, and to all lots used for open storage by a used parts and used accessories dealer, from and after December 22, 1993. Any owner or operator of an automobile storage lot, automobile wrecking and salvage yard or lot used for open storage by a junk dealer, a scrap metal processor or a secondhand dealer, which as of December 22, 1982, and any owner or operator of a lot used for open storage by a used parts and used accessories dealer, which as of December 22, 1993, is located within 300 feet of a church, school or residence shall, within 30 days of the date specified above, as applicable, make application with the appropriate licensing department for a special permit that indicates that the holder of the permit is located within 300 feet of a church, school or residence. It shall be unlawful to own or operate an automobile storage lot, automobile wrecking and salvage yard, a lot used for open storage by a junk dealer, a scrap metal processor or a secondhand dealer or a lot used for open storage by a used parts and used accessories dealer within 300 feet of a church, school or residence without first procuring the special permit required by this subsection.

- (2) Subject to compliance with other applicable laws, including chapters 7 and 8 of this Code as applicable, a special permit may be transferred to another owner. Application shall be made to the department responsible for issuing the permit, whether the police department or the finance and administration department, and shall be executed by both the transferor and the transferee. In the event that the use of the premises is ceased at any time for a period of 90 or more consecutive days, then the special permit shall expire, and this provision shall not be construed to allow the transfer of a special permit that has so expired. A special permit may be revoked for failure to comply with any applicable law, regulation, or statute relating to the licensing or other regulation of the business.

- (3) If improvements upon any lot covered by this subsection are destroyed or damaged as a result of fire, explosion, weather or other act of God in excess of 50 percent of the value of the then-current market value of the improvement based on the current city tax rolls, such improvement shall not be rebuilt or otherwise reconstructed. Nothing in this subsection shall be construed to prohibit the minor repair or routine maintenance of any existing improvements.
- (4) No holder of a special permit shall be entitled to expand or otherwise enlarge the business by adding additional improvements or land or to make a new investment thereto; provided, however, that this restriction on the addition of improvements shall not apply to improvements made in order to comply with any state or local ordinance, statute or regulations.
- (5) If a licensed automobile storage lot, automobile wrecking and salvage yard, or a lot used for open storage by a junk dealer, a scrap metal processor, a secondhand dealer or a used auto parts and used accessories dealer holds a valid special permit under this subsection, then it shall not be placed in violation of this section, or become ineligible for a renewal of a permit or license, or be required to obtain a special permit, due to the subsequent construction or placement of a church, school or residence within 300 feet of the location of such licensed business.

(d) *Newly annexed areas.* Persons owning or operating automobile storage lots, automobile wrecking and salvage yards, lots used for open storage by junk dealers, scrap metal processors, secondhand dealers, and used parts and used accessories dealers situated in areas that are newly annexed into the corporate limits of the city after the dates specified in subsection (c) above, as applicable, may apply for and be granted special permits in the same manner provided for existing owners or operators under subsection (c), above. The application for the special permit must be filed within 30 days following the effective date of the annexation of the area where the lot or yard

is situated. Special permits issued under this subsection and holders thereof shall be subject to all of the same restrictions imposed under subsection (c) with regard to other special permits and holders thereof, provided that the effective date of the annexation of the area where the lot or yard is situated shall apply in lieu of the applicable date specified in subsection (c) above, in any determination made with regard to the special permit or business operated thereunder. The provisions of this subsection shall not be available to the operator of any premises unless the premises was open for a business subject to regulation under this section on the date of first publication in a newspaper of general circulation of the notice of annexation hearings under Section 43.052 of the Local Government Code or unless the operator had, on or before that date, leased or purchased the property and had actually commenced improving it for the express purpose of establishing the regulated business.

(e) *Reserved.*

(f) *Improvement of specially permitted facilities.*

(1) Notwithstanding the provisions of item (4) of subsection (c), above, the planning commission may authorize the improvement of a specially permitted facility that is regulated under this section in accordance with this subsection. An application for improvement of a specially permitted facility shall be made to the planning official in a form prescribed by the director of planning and development and shall include:

- a. A nonrefundable fee of \$200.00; and
- b. A statement of the specific facts and reasons that the applicant believes warrant the authorization, which shall address each of the criteria of item (4) of this subsection.

The director shall cause each application to be reviewed and shall cause a staff report regarding the application to be provided to the commission prior to the meeting at which the application will be considered. The commission shall schedule the consideration of each application

for a meeting of the commission and shall instruct the applicant and the director to cause notice to be given as provided in items (2) and (3) of this subsection.

(2) Notice of the commission meeting at which the application will be considered shall be given in both English and Spanish at the expense of the applicant by:

- a. The publication of notice, in a form to be prescribed by the director, in a newspaper of general circulation in the city, at least 15 days before the date of the commission meeting;
- b. The mailing of notice, at least 15 days before the date of the commission meeting, to the owners, as shown on the most recently approved tax roll, of each tract or parcel of property that is situated in whole or in part within a distance of 300 feet from the boundaries of the property that is the subject of the request for a transfer application;
- c. The mailing of notice, at least 15 days before the date of the commission meeting, to all civic associations registered with the planning and development department whose boundaries include all or a portion of the area situated within 300 feet of the property that is the subject of the transfer application; and
- d. The posting of notice upon a sign on the property for which the improvement is requested, giving notice of the application and the date of the commission meeting. The director shall prescribe the dimensions of the sign and shall establish criteria for the location of the sign. If the property for which the application is made fronts on or has access to more than one public street, the director may require placement of more than one sign on the subject property upon a finding that more than one sign is necessary to provide adequate notice. The sign or signs shall be posted

72 hours after the director gives notice for their posting to the applicant, provided that the sign shall be posted at least 15 days prior to the date of the hearing.

- (3) The applicant shall provide the following information to the director at the time specified by the director:

a. A certified list of the property owners to whom notice must be given pursuant to item (2) of this subsection; and

b. For each property owner and registered civic association to whom notice must be given pursuant to item (2) of this subsection:

1. One stamped envelope addressed to each property owner and registered civic association; and

2. One copy of the notice of the public hearing in the form prescribed by the director.

The applicant shall also provide proof to the director that the required newspaper notices have been timely published and that the required sign(s) have been posted and maintained for the required time period.

- (4) The applicant and any member of the public may address the commission and present evidence or comments regarding the application at the meeting at which it is considered. The burden shall be upon the applicant to show by a preponderance of the credible evidence that the applicant is entitled to the granting of the application. Following the receipt of evidence and comments, the commission shall consider the matter and shall grant the application if it determines that each of the following criteria exists:

a. The improvement will not substantially increase the vehicular traffic on any street that is not a major thoroughfare. In making this determination, the commission shall con-

sider whether the facility takes its primary access from a major thoroughfare and whether it has rail or waterborne access for the receipt and shipment of materials.

b. The improvement will not have a negative effect upon the appearance of the community in which it is situated. In making this determination, the commission shall consider the applicant's plans for perimeter fencing and landscaping as well as the appearance of any structures, equipment, or other features of the facility that may be visible from the exterior.

c. The facility, by virtue of its activities, does not pose a substantial risk of adverse health effects, unlawful noise, fire, explosion, or other nuisance conditions, and the proposed improvements will not increase those risks. In making this determination, the commission shall consider the prior operating history of the facility.

d. There exists upon the property a capital investment of at least \$500,000.00 current book value in facilities and equipment.

e. The facilities and equipment upon the property were placed for the operation of the facility for which the authorization is sought and may not readily be adapted to other uses that are not subject to regulation under this section or be removed to another location.

f. The granting of the application will not be injurious to the public health, safety, and welfare.

The commission may condition its granting of the application, if granted, upon the applicant's installation and maintenance of buffer zones, trees, shrubs, special fences, or other improvements to reduce noise or improve the external appearance of the property if it determines that the action is desirable to protect the public health,

safety, and welfare. Any such requirement shall be consistent with the purpose of causing the use of the applicant's property to be as harmonious as practicable with the use of other nearby properties.

- (5) The applicant or any person to whom notice is required to be given under part b. or c. of item (2) of this subsection may appeal, provided that the person attended and participated in the commission meeting, either in person or through an authorized representative. Appeals shall be to the city council and shall be governed by rule 12 of the city council rules of procedure (section 2-2 of this Code). Notice of an appeal must be filed in the city secretary's office by the tenth day following the rendition of the commission's decision on the application. The commission shall cause each meeting or portion thereof at which an application is to be considered to be videorecorded. Notwithstanding any provision of rule 12 to the contrary, any required transcript for an appeal to the city council may be prepared from the video recording. An appeal shall not suspend the action of the commission pending the decision of the city council.

(g) The licensing department may extend the filing period for a special permit upon demonstration to the director by clear and convincing evidence that the facility was in fact in operation on the effective date and that the applicant's failure to timely file was based upon an error or misunderstanding and not the result of conscious indifference to the requirements of this section.

(h) The provisions of this section are not applicable to the premises of a body shop facility with storage privileges operating under a valid license issued under division 4 of article II of chapter 8 of this Code.

(Code 1968, § 28-72; Ord. No. 80-414, § 1, 2-27-80; Ord. No. 80-643, § 1, 3-26-80; Ord. No. 82-1541, § 1, 9-22-82; Ord. No. 82-1703, § 1, 10-26-82; Ord. No. 82-2038, § 7, 12-22-82; Ord. No. 86-1252, § 29, 7-16-86; Ord. No. 87-1922, § 1, 11-18-87; Ord. No. 93-1646, §§ 1, 2, 12-22-93; Ord. No. 95-104, § 1, 1-25-95; Ord. No. 96-1377, § 1, 12-18-96; Ord. No.

98-334, § 3, 4-29-98; Ord. No. 99-1354, § 4, 12-21-99; Ord. No. 99-1378, §§ 2—5, 12-21-99; Ord. No. 02-676, §§ 1, 2, 7-17-02)

Sec. 28-35. Reserved.

Editor's note—Section 2 of Ord. No. 86-323, enacted March 5, 1986, amended the provisions of former § 28-35 to read as set forth in Art. III, § 28-121 et seq., of this chapter. Section 28-35, which pertained to sexually oriented commercial enterprises, derived from § 28-73 of the 1968 Code, as amended by Ord. No. 80-3483, § 1, enacted Dec. 17, 1980; Ord. No. 83-1812, § 3, enacted Dec. 1, 1983; Ord. No. 84-92, §§ 1, 2, enacted Jan. 17, 1984; Ord. No. 84-1256, § 1, enacted Aug. 14, 1984; and Ord. No. 85-571, § 1, enacted April 23, 1985.

Sec. 28-36. Reserved.

Sec. 28-37. Attention-getting devices.

(a) *Definitions.* As used in this section, the following words and terms shall have the meanings ascribed to them in this subsection, unless the context of their usage clearly indicates another meaning:

Attention-getting devices shall mean devices erected, placed or maintained so as to attract attention to any commercial business, or any goods, products or services available on the premises of the commercial business, which shall include but, not be limited to, the following: banners; cut-out figures; discs; festooning; inflatable objects, including balloons; non-governmental flags; pennants; propellers; steam- or smoke-producing devices; streamers; whirligigs; blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating, search, flood or spot lights; or similar devices; any of which are located or employed in connection with the conduct of a commercial business. Attention-getting devices shall not include 'spectacular signs' as that term is defined in Section 4603(c)(4) of the Houston Sign Code or "flag signs" as that term is defined in Section 4603 of the Houston Sign Code. The term 'banners' shall not include lawfully erected and maintained 'banner signs' as that term is defined in Section 4603(b)(1) of the Houston Sign Code or other banners lawfully erected and maintained under section 40-30 or 40-31 of the Code of Ordinances, as amended or light standard decorations as defined in Section 4602 of the Houston Sign Code.

Provided, further, that any device otherwise defined as an attention-getting device which contains or displays any written message, business name, pictorial representation, logo, corporate symbol, silhouette or other visual representation identifying or advertising a particular business, good, service or merchandise sold or available for sale on the premises where the device is erected, displayed or maintained shall be a "sign" as that term is defined in Section 4602 of the Houston Sign Code and shall be subject to the provisions of that Code, rather than this section.

(b) It shall be unlawful for any person to place, erect, maintain, or display any attention-getting device on any private or public property within the city: provided, however, that any person may erect, maintain or display, however any attention-getting device on any premises owned, controlled or lawfully occupied by such person for a period not to exceed 44 days in any calendar year for purposes such as sales, special events, grand openings and other similar activities. Provided, further, that any person may place, erect, maintain or display any attention-getting device for purposes of any holiday or seasonal display for any period, or combination of periods, not to exceed 60 days in any calendar year on the same business premises. The 60-day period shall be in addition to the above-referenced 44-day period. Provided, however, that it shall be unlawful to place, erect, maintain or display any attention-getting device for either the 44-day period or the 60-day period referenced above without first complying with the procedures set forth under subsection (e) of this section.

(c) It shall be an affirmative defense to prosecution under subsection (b) of this section that the attention-getting device is expressly permitted by this Code or by the Houston Sign Code or forms an integral portion of the advertising display or face of an existing, lawfully erected, permitted and maintained sign, as that term is defined in Section 4602 of the Houston Sign Code.

(d) Enforcement of this section shall be the duty of the sign administration division of the department of public works and engineering or of any law enforcement officer; provided, however,

that no funds whatsoever shall be expended from the sign permitting fund authorized under Section 4605(i) of the Houston Sign Code for any costs, including full administrative costs, of enforcing this section.

(e) Each person desiring to place, erect, maintain, or display any attention-getting device on any premises owned, controlled or lawfully occupied by that person shall, prior to erecting, displaying or maintaining any such device, register with the sign administrator or his authorized designee and provide the address and a brief written description of each premises where such device or devices are to be placed, erected, displayed or maintained in any calendar year. A nonrefundable fee of \$15.00 per calendar year, for each separate premises upon which such devices are to be displayed during such calendar year, shall be assessed to defray administrative costs associated with enforcing this section. For applicants desiring to display attention-getting devices at or upon multiple separate premises, each such premises shall require a separate fee; provided, however, the maximum fee assessed to any single applicant for all of that applicant's premises utilized to display attention-getting devices shall not exceed \$100.00 for any calendar year.

The applicant shall, prior to erecting, displaying or maintaining any such devices, declare the dates on which the devices will be erected, displayed or maintained at each location. Any applicant desiring to alter or add to dates previously declared for a specific premises or location shall be required to notify the sign administrator or his authorized designee, in writing, of such changed or additional dates; provided, however, any such supplemental declaration for dates for a location previously declared in that same calendar year shall require no additional fee.

Each premises shall require a separate registration and a separate declaration.

(f) Any person who shall violate any provision of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than \$150.00 and not more than

\$200.00 for each violation. Each day in which any violation shall occur shall constitute a separate offense.

(Ord. No. 93-906, § 1, 7-21-93; Ord. No. 98-613, § 53, 8-5-98; Ord. No. 04-1015, § 14, 9-27-04; Ord. No. 05-603, § 2, 5-11-05)

Sec. 28-38. Painting or posting advertising matter on curbs, sidewalks, bridges or public buildings.

No person in the city shall paint, print, post, or otherwise display any poster, picture, bill or advertising matter of any kind in, at or upon any curb, sidewalk or other public improvement in any public street or grounds, any bridge or part of same, any public building, structure or erection of any kind belonging to the city, or any other public place, unless express consent therefor shall have been first granted by the city council and entered on its minutes.

(Code 1968, § 3-2; Ord. No. 70-1747, § 1, 10-6-70)

Cross references—Erecting structures, bill posting, etc., in parks, § 32-32; erecting, placing, etc., banners or signs across streets, § 40-15; advertising materials prohibited in shelters for users of public transportation, § 40-200(f)(8).

Sec. 28-39. Posting advertising matter on utility poles, trees, traffic signs, etc.

(a) It shall be unlawful for any person to place or cause to be placed, whether by posting, nailing, pasting, gluing or the use of any cohesive substance or in any manner whatever, any advertising sign, poster, political advertisement, gummed label, bumper sticker, or any other advertising matter whatever on any utility pole, tree, fence, fire hydrant, street light standard, traffic light standard, stop sign or other traffic directional sign standard, or on any other structure of any kind whatsoever located in the public streets, sidewalks, alleyways, easements, public property, or any other public place in this city.

(b) Any person violating any provision of this section, upon conviction, shall be fined not less than \$100.00 nor more than \$500.00 for each violation, and each day that the violation continues shall constitute a separate offense.

(Code 1968, § 3-3; Ord. No. 70-1747, § 1, 10-6-70; Ord. No. 92-1449, § 46, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for time served in incarceration, § 35-6 et seq.; erecting structures, bill posting, etc., in parks, § 32-32; placing banners, signs, etc., over or across street, § 40-15; advertising material prohibited in shelters for users of public transportation, § 40-200(f)(8).

Sec. 28-40. Carrying advertisements on persons or animals.

It shall be unlawful for any person to carry upon or about or attach to his person, or attach to any animal ridden, driven or led upon the streets of the city, any poster. Any bona fide participant in a parade for which any permit has been secured from the proper officials of the city which is now or may hereafter be required shall be exempt from the provisions of this section while participating in such parade.

(Code 1968, § 3-4; Ord. No. 70-1747, § 1, 10-6-70; Ord. No. 70-3137, § 1, 12-8-70; Ord. No. 71-489, § 1, 3-10-71)

Sec. 28-41. Posting or distributing obscene matter viewable by minors.

No billposter, bill distributor or other person shall post to any building, structure or object whatsoever, nor distribute in or at any place in the city, any poster or handbill that would be construed by law as that immoral or obscene matter proscribed for by Section 43.24 of the Texas Penal Code so that the same shall, can, or may be seen from any public street, park, school grounds or other public place where it would be reasonable to assume, judged by the standard of common experience, that minors would be present.

(Code 1968, § 3-9; Ord. No. 70-1747, § 1, 10-6-70)

Sec. 28-42. Handbill distribution.

No bill distributor shall hand to or foist upon any person a handbill without the consent of such person.

(Code 1968, § 3-10; Ord. No. 70-1747, § 1, 10-6-70)

Cross reference—Advertising materials prohibited in shelters for use of public transportation, § 40-200(f)(8).

Sec. 28-43. Warning required on certain political advertising materials.

(a) As used in this section:

- (1) *Election* means any election conducted or to be conducted by or on behalf of the state, any one or more of the political subdivisions of the state or any political party, in which election, one or more of the residents of the city is qualified to vote;

- (2) *Political advertising material* means any advertising material relating to any election which might, with reasonable foreseeability, be placed, posted or erected within the city by any person in violation of sections 28-38 and 28-39 of this Code or Chapter 46 of the city's Building Code; and
- (3) *The warning* means the following words: "Warning: Placement, posting or erection of this material within the City of Houston is regulated by sections 28-38 and 28-39 of the city's Code of Ordinances and Chapter 46 of the city's Building Code; violation thereof is punishable by a fine of up to five hundred dollars (\$500.00)."

(b) It shall be unlawful for any person to print, distribute or use or to cause to be printed, distributed or used any political advertising material unless the warning is affixed thereto. The warning shall be affixed by permanent means upon each face of the political advertising material where any advertising message is printed. The warning need only be so conspicuous that a person of normal visual acuity would reasonably be expected to take notice of the warning upon placing, posting or erecting the political advertising material.

(Code 1968, § 3-3-1; Ord. No. 81-1084, § 1, 5-27-81; Ord. No. 92-1449, § 47, 11-4-92)

Sec. 28-44. Solicitation to purchase or acquire a controlled substance, controlled substance analogue, dangerous drug or volatile chemical.

(a) As used in this section, the following words and terms shall have the meanings ascribed to them in this subsection, unless the context of their usage clearly indicates another meaning:

Controlled substance shall have the meaning ascribed to it by Section 1.02(4) of Article 4476-15, Texas Revised Civil Statutes or any amendments thereto.

Controlled substance analogue shall have the meaning ascribed to it by Section 1.02(5) of Article 4476-15, Texas Revised Civil Statutes or any amendment thereto.

Dangerous drug shall have the meaning ascribed to it by Section 2(a) of Article 4476-14, Texas Revised Civil Statutes or any amendment thereto.

Prohibited substance shall mean a "controlled substance," "controlled substance analogue," "dangerous drug," "volatile chemical," or any combination thereof.

Volatile chemical shall mean any of the chemicals, or an isomer of any of the chemicals, listed in Section 2 of Article 4476-13a, Texas Revised Civil Statutes or any amendment thereto.

(b) A person commits an offense if, with intent to acquire a prohibited substance, he requests, commands or attempts to induce another to sell, donate or otherwise transfer or deliver a prohibited substance to the person.

(c) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(d) It is no defense to prosecution under this section that:

- (1) No monetary or other consideration was tendered to the person solicited; or
- (2) That the person solicited was unable or unwilling to transfer or deliver a prohibited substance.

(e) It is an affirmative defense to any prosecution under this section that:

- (1) The solicitation is made in furtherance of a transaction which would not constitute a violation of any applicable law; or
- (2) The solicitation is made by a peace officer or federal law enforcement officer in the lawful discharge of his duties or by a law enforcement agent acting in the lawful discharge of an official duty.

(f) Violation of this section shall constitute a misdemeanor punishable, upon conviction, by a fine of not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2,000.00).

However, any conduct proscribed hereunder which also constitutes an offense under state law shall not be prosecuted under this section, but shall be prosecuted pursuant to and punishable as provided by the applicable state law. An offense under this section is not a lesser included offense under Article 4476-15, Article 4476-14 or Article 4476-13a, Texas Revised Civil Statutes Annotated.

(Ord. No. 89-918, § 1, 6-21-89)

Sec. 28-45. Repeated following and harassment of a person.

(a) Definitions. As used in this section, the following words and terms shall have the meanings ascribed to them in this subsection, unless the context of their usage clearly indicates another meaning:

Bodily injury shall have the meaning ascribed to it by section 1.07 of the Texas Penal Code, as amended.

Follow shall mean to pursue, trail, shadow or chase a person.

Harass or harassed shall mean to engage, or have engaged in, a pattern of conduct or series of acts and threats over a period of time directed at a specific person that would cause a reasonable person to be placed in imminent fear of death, bodily injury or serious bodily injury.

Repeatedly shall mean on more than one occasion within a one-year period.

Serious bodily injury shall have the meaning ascribed to it by section 1.07 of the Texas Penal Code, as amended.

(b) It shall be unlawful for any person to knowingly and repeatedly harass any other person or follow any other person under circumstances in which that person has previously harassed the person being followed.

(c) It is an affirmative defense to any prosecution under this section that the conduct proscribed under this section is engaged in by a peace officer or federal law enforcement officer in the lawful discharge of his or her duties while in the course of investigating a criminal offense or possible criminal activity.

(d) Violation of this section shall constitute a misdemeanor punishable, upon conviction, by a fine of not less than \$100.00 nor more than \$500.00. However, any conduct proscribed hereunder that also constitutes an offense under state law shall not be prosecuted under this section, but shall be prosecuted pursuant to and punishable as provided by the applicable state law.
(Ord. No. 92-1628, § 1, 12-16-92)

Sec. 28-46. Aggressive panhandling.

(a) The following words, terms, and phrases when used in this section shall have the meanings ascribed to them in this subsection, unless the context of their usage clearly indicates another meaning:

Automated teller machine or ATM means a machine, other than a telephone, that is capable of being operated by a patron to communicate to a financial institution:

- (1) A request to withdraw money from an account directly or under a line of credit previously authorized;
- (2) An instruction to deposit money in an account with the financial institution;
- (3) An instruction to transfer money between one or more accounts maintained with the financial institution;
- (4) An instruction to apply money against an indebtedness to the financial institution; or
- (5) A request for information concerning the balance of the account with the financial institution.

Fuel dispensing device means a pump or other machine utilized for dispensing fuel to motor vehicles for a fee.

Pay telephone means any coin-operated or credit or debit card reader operated telephone located on any public or private property that is accessible for public use.

Parking meter means any coin-operated meter utilized to charge for parking a motor vehicle on public property.

Parking fee collection box means a device utilized to collect coins or currency as a charge for parking a motor vehicle on private property.

Public place means a street, sidewalk, or other place that is open to the public.

Request means any imperative instruction, whether verbal or non-verbal, by a solicitee to a solicitor to desist the solicitation including but not limited to words or gestures such as "stop," "back off," "stay back," "get away," "leave me alone," or "withdraw."

Solicitation means the act of panhandling by seeking through a communication with another person, whether by gesture or verbally, funds or goods for food, personal favors (such as trips, transportation, clothing, or other), drink, lodging, vehicle fare, or any other purpose to directly benefit an individual or his family members.

Solicitee means any individual to whom a solicitor, as defined herein, directs a solicitation.

Solicitor means any person who engages in the act of solicitation as defined above.

Transit facility means a facility that:

- (1) Is owned and operated by the Metropolitan Transit Authority of Harris County, Texas (METRO);
- (2) Constitutes a permanent and integral part of the transit system of METRO;
- (3) Is designed to serve as a point from which METRO patrons take ingress and egress from the METRO transit system; and
- (4) Includes one or more of the following structures: a sign or signs indicating a transit stop or pick-up point, a shelter for transit patrons or benches or chairs for transit patrons.

(b) Immediately upon any request from a solicitee to a solicitor, a solicitor who is in a public place at the moment the request is made shall discontinue the solicitation until there is a space of at least eight feet between the solicitor and the

solicitee or, in the alternative, discontinue all efforts to engage in the solicitation if within eight feet proximity to a requesting solicitee.

(c) For the purposes of subsection (b) of this section, distance shall be measured from any extension of the solicitor's body, including without limitation any sign or other object being used or carried by the solicitor, to any part of the solicitee's body.

(d) Regardless of whether or not any request is made by the solicitee to the solicitor, no solicitor shall engage in solicitation within a distance of eight feet from any ATM, pay telephone, parking meter, parking fee collection box, transit facility, or fuel dispensing device.

(e) For the purposes of subsection (d) of this section, distance shall be measured from any extension of the solicitor's body, including without limitation any sign or other object being used or carried by the solicitor, to any part of the physical structure of the ATM, pay telephone, parking meter, parking fee collection box, transit facility, or fuel dispensing device.

(f) Any person who knowingly or intentionally violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by section 1-6 of this Code.

(Ord. No. 92-390, § 2, 4-8-92; Ord. No. 92-1449, § 48, 11-4-92; Ord. No. 02-504, § 3, 6-12-02)

Sec. 28-47. Discharge of firearms by minors; responsibility to avoid same.

(a) The purpose of this section is education and training to reduce the discharges of firearms by minors and the tragedies that often result from those discharges.

(b) As used in this section the following words shall have the meanings ascribed herein:

- (1) *Adult* means any person who is 18 years of age or older.
- (2) *Child* means any person who is younger than 18 years of age.
- (3) *Firearm* means any device designed, made or adapted to expel a projectile through a

barrel by using the energy generated by an explosive or burning substance or any device readily convertible to that use.

- (4) *Range* means any public or private facility at which firearms training or practice, or both, is conducted under controlled circumstances intended to encourage the safe handling of firearms and at which procedures or facilities are in place that are intended to prevent the projectiles discharged from the firearms from causing any damage to persons or property.

(c) It is unlawful for a child intentionally, knowingly, recklessly or with criminal negligence to discharge a firearm within the city.

(d) It is unlawful for any adult intentionally, knowingly, recklessly or with criminal negligence to facilitate, suffer or permit the discharge of a firearm by a child by allowing the child to obtain unsupervised access to the firearm.

(e) It is unlawful for any adult intentionally, knowingly, recklessly or with criminal negligence to facilitate, suffer or permit the physical possession of a firearm by a child by allowing the child to obtain unsupervised access to the firearm.

(f) It is a defense to prosecution under subsections (c), (d) or (e) that:

- (1) the firearm was possessed or discharged upon a range and under the supervision of an adult, or
- (2) the child's access to firearms was obtained as a result of an unlawful entry, or
- (3) the discharge or possession of the firearm was justified as provided in chapter 9 of the Texas Penal Code, or

It is additionally a defense to prosecution under subsection (d) or (e) that the actor had taken reasonable precautions under the attendant circumstances to ensure that minors would not have the ability to obtain access to the firearm without supervision. Such precautions could include, but need not be limited to:

- (1) storage of the firearm in a place where, at the time the access was obtained, an un-

supervised child would not reasonably have been expected to have been able to gain access, or

- (2) storage of the firearm in a locked safe, locked rack, locked hard case, locked soft case, locked drawer, locked cabinet or other locked container, or
- (3) installation of a lock on the firearm to prevent its normal function and discharge.

(g) Violation of this section is a misdemeanor punishable by a fine of not less than \$200.00 nor more than \$500.00 per violation. To the extent that any conduct in violation of this section also constitutes a violation of state law, then the conduct shall be punishable under the applicable state law.

(h) In keeping with the policy of education and firearm accident prevention that is one of the underlying purposes of this section, the municipal courts are urged to consider deferred dispositions under article 45.54 of the Texas Code of Criminal Procedure whenever the circumstances warrant deferred dispositions. Conditions of deferral may include the defendants' obtaining firearms safety training and participating in projects aimed at preventing the unsafe discharge of firearms by juveniles or other similar and reasonable requirements.

(Ord. No. 92-471, § 2, 4-22-92)

Sec. 28-48. Manifesting the purpose of engaging in prostitution or solicitation of prostitution.

(a) A person commits an offense if he loiters in a public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances that openly demonstrate the purpose of inducing, enticing, soliciting, or procuring another to commit an act of prostitution. The circumstances that may be considered in determining whether a person loitered with the intent to commit prostitution include, among others, whether the person engaged in the conduct:

- (1) Is a known prostitute;

- (2) Repeatedly beckons to, stops or attempts to stop or engages other persons in conversation, or repeatedly stops or attempts to stop other persons by hailing, waving of arms, or use of any other bodily gesture; and
- (3) Is in a location frequented by persons who engage in prostitution or solicitation of prostitution.

No arrest shall be made for a violation of this section unless the arresting officer first affords the actor an opportunity to explain his conduct, and it is a defense to prosecution hereunder that the explanation given was true and disclosed a lawful purpose.

(b) For the purpose of this section, a "known prostitute" is a person who, within one year previous to the date of arrest for violation of this section, has within the knowledge of the arresting officer been convicted of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution.

(c) The definitions of prostitution and related offenses in Chapter 43 of the Texas Penal Code shall apply to this section.

(d) The offense sent forth in this section is a misdemeanor and shall, upon conviction, be punishable by a fine of not less than \$500.00 nor more than \$2,000.00. However, any conduct in violation of this section that also constitutes an offense under state law shall instead be punishable as provided in the applicable state law.

(Ord. No. 03-491, § 2, 5-28-03)

Sec. 28-49. Major event safety zones.

(a) *Definitions.* As used in this section, the following terms shall have the meanings ascribed in this section:

Major event means a sporting event or other function that is expected to draw 75,000 or more persons to simultaneously congregate in an area of one square mile or less at or near a convention and/or sporting venue within the city.

Safety zone means a zone established under subsection (b), below.

Tent means a temporary structure covered with fabric or another type of membrane. The term is intended to also include canopies and air-supported, air-inflated, and tensioned membrane structures, as well as conventional tents.

(b) *Establishment of safety zone.* In consultation with the fire chief, police chief, and traffic engineer, as well as the director of planning and development and the director of any city department or other public agency that is acting as the host for a major event, the mayor is authorized to establish one or more safety zones in the vicinity of venues for the major event. Based upon the recommendations of the traffic engineer, the fire chief, police chief and directors, which shall take into consideration the nature of the event, the numbers of persons and vehicles expected, the street and highway configurations, the condition and traffic flows expected on the streets, highways, and sidewalks, the location of police and fire stations, hospitals, and other critical facilities, security plans for the event, and other relevant factors, the mayor shall establish the safety zone and the period that it will be in effect. Any such safety zone shall be established for an area with specified boundaries and shall be limited to a stated period of time at which large numbers of persons and vehicles are expected to be within the safety zone for the event or for activities relating to setting up and taking down apparatus for the event. The order establishing the safety zone shall be signed by the mayor and filed with the city secretary at least ten days before the time period for the safety zone commences. The city secretary shall cause the notice to be published in a newspaper of general circulation at least one time before the period commences and shall post the notice on the same bulletin board used for open meetings notices.

(c) *Unlawful acts.* It shall be unlawful for any person to erect or cause to be erected or to use or cause to be used any tent within a safety zone during the time that the safety zone is in effect.

(d) *Defense to prosecution.* It is a defense to prosecution under subsection (c) that the tent is part of the support apparatus set up by or for the

major event and was set up by or on authorization of the persons conducting the major event and is not being used for merchandise sales or other activities of a commercial nature.
(Ord. No. 03-1314, § 2, 12-23-03)

Secs. 28-50—28-80. Reserved.